

Carney R. Shegerian, Esq., State Bar No. 150461  
CShegerian@Shegerianlaw.com  
Mahru Madjidi Esq., State Bar No. 297906  
MMadjidi@Shegerianlaw.com  
John David, Esq., State Bar No. 341707  
JDavid@Shegerianlaw.com  
Yessenia Cardoza, Esq., State Bar No. 309694  
YCardoza@Shegerianlaw.com  
SHEGERIAN & ASSOCIATES, INC.  
11520 San Vicente Boulevard  
Los Angeles, California 90049  
Telephone Number: (310) 860-0770  
Facsimile Number: (310) 860-0771

Attorneys for Plaintiff,  
ALEX VILLANUEVA

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ALEX VILLANUEVA,

Plaintiff,

vs.

COUNTY OF LOS ANGELES,  
COUNTY OF LOS ANGELES  
SHERIFF'S DEPARTMENT, LOS  
ANGELES COUNTY BOARD OF  
SUPERVISORS, COUNTY EQUITY  
OVERSIGHT PANEL, LOS  
ANGELES COUNTY OFFICE OF  
INSPECTOR GENERAL,  
CONSTANCE KOMOROSKI,  
MERCEDES CRUZ, ROBERTA  
YANG, LAURA LECRIVAIN,  
SERGIO V. ESCOBEDO, RON  
KOPPERUD, ROBERT G. LUNA,  
MAX-GUSTAF HUNTSMAN,  
ESTHER LIM, and DOES 1 to 100  
inclusive,

Defendants.

Case No.: 2:24-cv-04979 SVW (JC)

**The Honorable Stephen V. Wilson and  
Magistrate Judge Jacqueline Chooljian**

**PLAINTIFF ALEX VILLANUEVA'S  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: September 9, 2024  
Time: 1:30 p.m.  
Dept.: 10A and Courtroom 750

Trial Date: [TBD]  
Action Filed: June 13, 2024

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Alex Villanueva (“Villanueva” or “Plaintiff”) has plead sufficient facts to establish the causes of action raised in his Complaint at this pleading stage and, therefore, Defendants’ motion to dismiss should be denied for several reasons.

*First*, Plaintiff has adequately pleaded sufficient facts to support his due process claim, demonstrating a violation of his constitutional rights under the Fourteenth Amendment. Furthermore, Plaintiff has substantiated his First Amendment claim by providing facts supporting retaliation for engaging in free speech, thereby establishing a plausible cause of action. Plaintiff has further provided a factual basis suggesting that Defendants’ policymakers either ratified and/or were involved in the decisions that led to the constitutional violations and that Plaintiff has and will continue to suffer injury. Lastly, Plaintiff’s related tort claims are supported by well-pleaded facts that align with the requisite legal standards, ensuring that these claims are viable at this pleading stage.

*Second*, Plaintiff Alex Villanueva’s (“Villanueva” or “Plaintiff”) 35+ year career with the Los Angeles County Sheriff’s Department was permanently terminated by Defendants without notice or opportunity of a hearing in violation of his due process rights, and in retaliation for engaging in free speech.

*Third*, Plaintiff’s tort claims alleged in the Complaint were properly presented and pleaded sufficiently. Plaintiff states a viable claim for defamation as the Complaint alleges a series of non-privileged defamatory statements made by Defendants, including Max-

1 Gustaf Huntsman and Esther Lim. Notwithstanding the false and damaging nature of these  
2 *per se* defamatory statements, Defendants’ relied on these accounts to strategically revive  
3 these complaints, following his announcement that he would run for Los Angeles County’s  
4 Board of Supervisors, for the purpose of damaging Plaintiffs’ reputation and ruining his  
5 career prospects.

6 *Fourth*, plaintiff seeks leave to amend his First Amendment claim to rightfully raise  
7 the claim under Section 1983. Furthermore, with respect to any other claim the Court  
8 deems insufficient, plaintiff respectfully requests leave to amend any such claim and to  
9 file an amended Complaint. Leave to amend should be granted freely in the interests of  
10 justice. [Federal Rules of Civil Procedure, Rule 15\(a\)](#). In the present case, defendants have  
11 not even argued, let alone established, that plaintiff could not allege more facts in support  
12 of his causes of action. Permission to amend is therefore respectfully requested.

13 For all the forgoing reasons, Defendants’ motion should be denied.

## 14 **II. BACKGROUND/RELEVANT FACTS**

15 Plaintiff Villanueva joined the Los Angeles County Sheriff’s Department in 1986,  
16 and, after completing the Sheriff’s Academy, plaintiff was assigned to the Inmate  
17 Reception Center. (Complaint at ¶ 8.) Villanueva diligently served his community and was  
18 promoted to the ranks of deputy sheriff (1986-2000), sergeant (2000-2011), and lieutenant  
19 (2011-2018). (Id.) On or around June 28, 2017, plaintiff Villanueva announced his  
20 campaign for Sheriff of Los Angeles County, and on or around December 3, 2018,  
21 Villanueva won the general election and became the first person in 104 years to unseat a  
22 sitting sheriff of Los Angeles County. (Complaint at ¶¶ 9-10.)

23 On or about June 29, 2022, Villanueva received two separate documents, both of  
24 which were titled “Office Correspondence,” from the Captain of the Internal Affairs  
25 Bureau, defendant Ron Kopperud (“Kopperud”). (Complaint at ¶ 11.) Each stated that he  
26 was the subject of an administrative investigation. (Id.) Villanueva was not provided with  
27 any further information regarding these allegations, either orally or in writing. (Complaint  
28

1 at ¶ 12.) Specifically, Villanueva did not learn the specifics of the allegations or the  
2 identities of the complainants. (Id.) While investigator Christine Diaz-Herrera, Plaintiff in  
3 fact reached out to the investigator after receiving interview requests. (Defendants’ Exhibit  
4 B to Motion to Dismiss.) However, despite ongoing communications, between January 9,  
5 2023, and March 10, 2023, the investigator and Plaintiff were unable to reach an  
6 agreement that would allow the interview to proceed. (Id.) There was no further contact  
7 from the investigator after Plaintiff requested to be informed of the subject matter of the  
8 interview questions. (Id.)

9 On or about September 13, 2023, Villanueva announced his candidacy for the Los  
10 Angeles County Board of Supervisors. (Complaint at ¶ 15.) On or around January 31,  
11 2024, Villanueva—for the very first time—learned of the findings of defendants’  
12 investigation of the aforementioned complaints through a hit piece in the *Los Angeles*  
13 *Times* titled “‘Do Not Rehire’: Panel finds Villanueva violated county discrimination,  
14 harassment policies” on the eve of ballots’ dropping for the 2024 primary. (Complaint at  
15 ¶ 16.)

16 It was not until Villanueva received the heavily redacted investigation file that he  
17 learned what happened with the allegations against him. (Complaint at ¶ 18.)  
18 Complainants were interviewed on or about July 21, 2022 and July 28, 2022—while  
19 Villanueva was still in office. (Id.) On or about September 20, 2023—a week after  
20 Villanueva announced his candidacy for the Los Angeles County Board of Supervisors—  
21 the Sheriff’s Department reopened the investigation of the aforementioned allegations.  
22 (Id.) On or about October 17, 2023, the Equity Investigations Unit (“EIU”) forwarded its  
23 findings on the allegations to the County Equity Oversight Panel (“CEOP”), which  
24 consisted of defendants Constance Komoroski, Mercedes Cruz, and Roberta Yang, who  
25 met and rendered their findings. (Id.) Specifically, Acting Commander of the Professional  
26 Standards Division defendant Sergio V. Escobedo sent correspondence to the CEOP  
27 regarding the charges that were made against Villanueva and disciplinary action  
28 recommendation: “Panel Recommends ‘Do not Rehire.’” (Id.)



1 On or about October 23, 2023, the complainants received from defendant Sheriff  
2 Robert G. Luna (“Luna”) and Captain of the Internal Affairs Bureau (“IAB”), defendant  
3 Kopperud, correspondence titled “Notification Letter,” notifying them of the findings.  
4 (Id.) Villanueva never received similar correspondence or any other notice.

5 Villanueva further alleges that the complaints’ allegations prompting defendants’  
6 investigation of Villanueva are marked by speculation, contention and falsehood, which  
7 underscore the breakdown in due process. (Complaint at ¶ 19.) Nevertheless, Villanueva  
8 was not given the opportunity to rebut the allegations. Instead, it is believed that  
9 defendants, without any notice, held and/or conducted secretive, closed sessions and one-  
10 sided proceedings *ex parte*, without providing Villanueva the opportunity to appear,  
11 testify, present any evidence in any manner, or have representation on his behalf.

12 Additionally, defendant Huntsman and his Los Angeles County Office of Inspector  
13 General have been permitted to defame Villanueva continuously and publicly on their  
14 County web site, claiming: “The Sheriff’s Department, particularly under former Sheriff  
15 Alex Villanueva, has gone to great lengths to keep its conduct secret. (Complaint at ¶ 19.)  
16 The unlawful acts and potentially unlawful acts enumerated,” generally referring to its  
17 own report. (Id.)

18 Ironically, the October 23, 2023 Notification Letters addressed to the complainants  
19 acknowledge Villanueva’s due process protections afforded by the Department, providing  
20 in part: “*You should be aware that Alex Villanueva has the right to grieve and/or*  
21 *otherwise appeal this recommended determination.*” (Complaint at ¶ 20.) However,  
22 Villanueva himself was never notified of either his grievance and/or his appeal rights. (Id.)

23 Furthermore, although the CEOP is required to “meet bi-monthly, or more frequently  
24 if necessary, to discuss and review the EIU investigation,” the CEOP did not meet until  
25 more than a year after the investigation interviews on “October 17, 2023,” “to render its  
26 finding,” in violation of its own policies and procedures. The Policy of Equality and  
27 Procedures further dictates:

28 *EIU investigations shall be immediate, thorough, objective, and complete.*



1 After discussion, the CEOP shall determine appropriate dispositions and discipline, if discipline is  
2 warranted. The CEOP immediately shall cause to be forwarded to the Sheriff for review all cases  
3 where its final recommended discipline determination exceeds 15 days suspension. . . .

4 The CEOP shall communicate its recommendations to the EIU, which *shall notify the appropriate*  
5 *parties. The EIU shall issue a Letter of Intent to Impose Discipline to the subject or, where*  
6 *appropriate, inform the subject that the complaint was unfounded or unresolved. At the same*  
7 *time, the EIU shall issue a letter to the complainant indicating that the complaint was either*  
8 *founded, unfounded, or unresolved and that if founded, appropriate corrective action was*  
9 *determined.*

10 While the CEOP did send notification of its findings to the complainants, Villanueva was  
11 never served with a Letter of Intent to Impose Discipline and, as such, was deprived of his  
12 due process rights to contest or appeal the CEOP's findings before they became final.  
13 (Complaint at ¶ 20.)

### 14 III. STANDARD OF REVIEW

15 "To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a  
16 complaint generally must satisfy only the minimal notice pleading requirements of Rule  
17 8(a)(2)." [\*Porter v. Jones\*, 319 F.3d 483, 494 \(9th Cir. 2003\)](#). Rule 8(a)(2) merely requires  
18 that a plaintiff provide a short and plain statement showing that he is entitled to relief to  
19 give a defendant fair notice of the claims and the grounds for the claims. Fed. R. Civ. P.  
20 8(a)(2). At this stage in the proceedings, district courts are required to accept "all factual  
21 allegations in the complaint as true and constru[e] them in the light most favorable to the  
22 nonmoving party." [\*Skilstaf, Inc. v. CVS Caremark Corp.\*, 669 F.3d 1005, 1014 \(9th Cir.](#)  
23 [\*2012\*](#)); [\*OSU Student Alliance v. Ray\*, 699 F.3d 1053, 1058 \(9th Cir. 2012\)](#). Moreover, a  
24 court must "draw all reasonable inferences in favor of the nonmoving party." [\*Usher v. City\*](#)  
25 [\*of Los Angeles\*, 828 F.2d 556, 561 \(9th Cir. 1987\)](#). The plaintiff "receives the benefit of  
26 imagination, so long as the hypotheses are consistent with the complaint." [\*Bell Atlantic\*](#)  
27 [\*Corp. v. Twombly\*, 550 U.S. 544, 563 \(2007\)](#) (quoting [\*Sanjuan v. American Bd. of\*](#)  
28 [\*Psychiatry & Neurology\*, 40 F.3d 247, 251 \(7th Cir. 1994\)](#)).

[\*Bell Atlantic Corp. v. Twombly\*, 550 U.S. 544, 553, 555 \(2007\)](#), requires merely that  
a plaintiff's complaint be "plausible." "The standard at this stage of the litigation is not

1 that plaintiff's explanation must be *true or even probable*. The factual allegations of the  
2 complaint *need only 'plausibly suggest an entitlement to relief.'*" (Emphasis added.) Starr  
3 v. Baca (9th Cir. 2011) 652 F.3d 1202, 1217; Twombly, supra, 550 U.S. at 556 (The Rule  
4 "does not impose a probability requirement at the pleading stage; *it simply calls for enough*  
5 *fact to raise a reasonable expectation that discovery will reveal evidence*" to support the  
6 allegations. (Emphasis added.)) In fact, a complaint survives a 12(b)(6) motion to dismiss  
7 even "[i]f there are two alternative explanations, one advanced by defendant and the other  
8 advanced by plaintiff, both of which are plausible." Baca, supra, 652 F.3d at 1216. "[A]  
9 complaint is not to be dismissed 'unless it appears beyond doubt that the plaintiff can  
10 prove no set of facts in support of his claims which would entitle him to relief,' and under  
11 this rule 'it is only the extraordinary case in which dismissal is proper.'" United States v.  
12 Redwood City, 640 F.2d 963 (9th Cir. 1981); Cauchi v. Brown, 51 F.Supp.2d 1014, 1016  
13 (E.D. Ca. 1999). This case presents no "extraordinary" reasons for a ruling on plaintiff's  
14 claims at issue. The pleading in the operative complaint "embrace[s] whatever specific  
15 facts might be necessary to support them." Peloza v. Capistrano United School Dist., 37  
16 F.3d 517, 521 (9th Cir. 1994).

#### 17 **IV. ARGUMENT**

##### 18 **A. Plaintiff's Complaint Alleges Facts Sufficient to Support His** 19 **Constitutional Due Process Claim.**

20 The Fourteenth Amendment provides that no state shall deprive any person of life,  
21 liberty, or property, without due process. U.S. Const. amend. XIV, § 1. Procedural due  
22 process focuses on the procedures involved when a state effectuates a deprivation of  
23 protected interests. Carey v. Piphus, 435 U.S. 247, 259, 98 S. Ct. 1042, 55 L. Ed. 2d 252  
24 (1978) ("Procedural due process rules are meant to protect persons not from the  
25 deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.")  
26 To obtain relief on § 1983 claims based upon procedural due process, the plaintiff must  
27 establish the existence of "(1) a liberty or property interest protected by the Constitution;  
28

(2) a deprivation of the interest by the government; [and] (3) lack of process.” Guatay Christian Fellowship v. Cty. of San Diego, 670 F.3d 957, 983 (9th Cir. 2011) (quoting Portman v. Cty. of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993)).

Here, Plaintiff has both a property and liberty interest in his career and has been deprived of those interests by Defendants’ decision to place him as a “no rehire” without due process.

**(1) Defendants Failed to Adhere to Their Own Policies and Procedures Designed to Ensure Due Process**

Contrary to Defendants’ claims, Plaintiff attempted to participate in the LASD investigation that ultimately resulted in the decision to place him on a “do not rehire.” As demonstrated by the email correspondence with investigator Christine Diaz-Herrera, Plaintiff in fact reached out to the investigator after receiving interview requests. (Defendants’ Exhibit B to Motion to Dismiss.) However, despite ongoing communications, between January 9, 2023 and March 10, 2023, the investigator and Plaintiff were unable to reach an agreement that would allow the interview to proceed. (Id.) There was no further contact from the investigator after Plaintiff requested to be informed of the subject matter of the interview questions. (Id.)

More importantly, Defendants admittedly failed to adhere to their own policies and procedures designed to ensure due process, including their obligation to give Plaintiff an opportunity to appeal and or file for grievance before the decision to place him as “no-rehire” became final. As outlined in the complaint, Defendants had clear policies and procedures that they wrongfully bypassed when it came to Plaintiff. (Complaint at ¶¶ 20-22.) While Defendants themselves admit in a letter to the investigation complainants that Plaintiff “has the right to grieve and/or otherwise appeal this recommended determination,” Plaintiff himself was never notified of either his grievance and/or appeal rights, nor was he given the opportunity to engage in those proceedings before the final decision to end his 35+ year career with the Department. (Id. at ¶ 20.)

Further, prior to the “no rehire” recommended determination, there was a suspicious

1 delay by the CEOP in rendering the recommendation following the investigation despite  
2 the CEOPs clear rules that they are required to “meet bi-monthly, or more frequently if  
3 necessary, to discuss and review the EIU investigation.” (Id. at ¶ 21.) Additionally,  
4 Defendants further failed to adhere to the *notice requirement* delineated in their own  
5 Policy of Equality and Procedures which required the EIU to “issue a Letter of Intent to  
6 Impose Discipline” to Plaintiff to afford him the opportunity to contest the  
7 recommendation before the “do not rehire” decision became final. (Id. at ¶ 22.) “The  
8 fundamental requirement of due process is the opportunity to be heard ‘at a meaningful  
9 time and in a meaningful manner.’” Mathews v. Eldridge, 424 U.S. 319, 333 (quoting  
10 Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)); Blantz  
11 v. Cal. Dep’t of Corr. & Rehab., 727 F.3d 917, 920 (9th Cir. 2013) (“Before the state  
12 deprives someone of a protected property interest, the right to some kind of prior hearing  
13 is paramount.”) Therefore, these are clear violations of Plaintiff’s due process rights.

## 14 (2) Liberty Interest.

15 At this pleading stage, Plaintiff has sufficiently demonstrated a liberty interest  
16 concerning his employment opportunities. The Fourteenth Amendment protects against  
17 the deprivation of liberty, which “encompasses the right of persons ‘to engage in any of  
18 the common occupations of life.’” Hyland v. Wonder, 972 F.2d 1129, 1141 (9th Cir. 1992)  
19 (quoting Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 572, 92 S. Ct. 2701, 33  
20 L. Ed. 2d 548 (1972)); see also Bollow v. Fed. Rsrv. Bank of San Francisco, 650 F.2d  
21 1093, 1100 (9th Cir. 1981) (“The liberty protected by the due process clause of the fifth  
22 and fourteenth amendments encompasses an individual's freedom to work and earn a  
23 living.”). Here, Defendants deprived Plaintiff of his liberty when they ended his 35+ year  
24 career with the Los Angeles Sheriff’s Department (“LASD”) by placing him as a “Do Not  
25 Rehire” without due process.

26 A liberty interest is further implicated (1) when the employer “makes a charge that  
27 *might* seriously damage [the terminated employee's] standing and associations in h[er]  
28 community” or (2) the employer “impose[s] on [a terminated employee] a stigma or other

1 disability that foreclose[s] h[er] freedom to take advantage of other opportunities.”  
2 Stretten v. Wadsworth Veterans Hosp., 537 F.2d 361, 365 (9th Cir. 1976). These due  
3 process protections will apply if 1) the accuracy of the charge is contested; 2) there is some  
4 public disclosure of the charge; and 3) it is made in connection with the termination of  
5 employment or the alteration of some right or status recognized by state law. Board of  
6 Regents of State Coll. v. Roth, 408 U.S. 564, 573.

7 In his Complaint, Plaintiff presents facts supporting his challenge to the accuracy  
8 of the charges leading to his designation as a “non-hire,” including the falsity of the  
9 charges made against him. (Compliant at ¶19). There has further been a public disclosure  
10 of the charge, and the charge was made in connection with the termination of his long-  
11 standing career with the Department. Furthermore, there is more than the plausibility that  
12 the charges made about Plaintiff have damaged his standing and associations in his  
13 community given his status within the community. As a the former Sheriff with a negative  
14 “do not rehire” mark, Villanueva has experienced humiliation, embarrassment, ridicule  
15 within the community, and his associations within the community have undoubtedly been  
16 drastically affected.

17 Additionally, the charge has imposed a stigma that has foreclosed opportunities,  
18 including Plaintiff’s ability to run for the Los Angeles County Board of Supervisors  
19 without a reputational hindrance. (Compliant ¶¶ 15-16; Fikre v. Fed. Bureau of  
20 Investigation, 35 F.4th 762, 776 (9th Cir. 2022) (A plaintiff who has suffered “reputational  
21 harm at the hands of the government may assert a cognizable liberty interest for procedural  
22 due process purposes if the plaintiff suffers stigma from governmental action plus  
23 alteration or extinguishment of a right or status previously recognized by state law.”);  
24 Clemente v. United States (1985) 766 F.2d 1358, 1360 (“the reasons for dismissal must be  
25 sufficiently serious to “stigmatize” or otherwise burden the individual so that he is not able  
26 to take advantage of other employment opportunities.”) Such stigmatization has been  
27 shown here. Plaintiff’s freedom to proceed with his career at the LASD effectively  
28 precludes him from his chosen career not only within the department but within the public

1 service industry at large due to the heavy negative stigma he carries as a “do not rehire”  
2 former employee. Such is the type of stigmatization that sufficiently demonstrates a liberty  
3 interest at this pleading stage. Blantz v. California Dep't of Corr. & Rehab., Div. of Corr.  
4 Health Care Servs., 727 F.3d 917, 925 (9th Cir. 2013) (To implicate a constitutional liberty  
5 interest, “the government's stigmatizing statements [must] effectively exclude the  
6 employee completely from her chosen profession.”) Here, there is no doubt that the  
7 stigmatizing statements have significantly harmed the Plaintiff’s future employment  
8 prospects in his chosen career, placing him in a disadvantage in this competitive industry.

9 **(3) Property Interest.**

10 A party may be able to show a property interest from the facts and circumstances of  
11 his or her case. Perry v. Sindermann, 408 U.S. 593, 602; Thomas v. Los Angeles, 676 F.  
12 Supp. 976, 981 (Property interest analysis determined by the totality of the circumstances  
13 and the particular facts of each case.) Here, Plaintiff had a property interest in his career  
14 with the Department that was deserving of due process protection given his long-standing  
15 35+ year career with the Department, as well as the Departments’ own policies of  
16 affording grievance and/or appeal proceedings prior to a final determination of placing  
17 Plaintiff on a “do not rehire” list. Thomas 676 F. Supp. at 980 (“Failure . . . to afford . . .  
18 a hearing could violate procedural due process.” “[A] party must be given an opportunity  
19 to prove the legitimacy of his claim of entitlement in light of the policies and practices of  
20 an institution.”) “A person's interest in a benefit is a ‘property’ interest for due process  
21 purposes if there are such rules or mutually explicit understandings that support his claim  
22 of entitlement to the benefit and that he may invoke at a hearing.” Thomas 676 F. Supp. at  
23 981 (citing Perry, 408 U.S. at 601.) Here, Plaintiff had a reasonable expectation of a due  
24 process hearing based on his 35+ year career with the Department as well as the  
25 Departments’ own policies and procedures, including the grievance and appeal rights  
26 process discussed above. Property interests “are created and their dimensions are defined  
27 by existing rules or understandings that stem from an independent source such as state law  
28 -- rules or understandings that secure certain benefits and that support claims of



entitlement to those benefits.” [Thomas](#) 676 F. Supp. at 980<sup>f</sup>. Having once established these procedures, they must be followed or plaintiff’s due process rights will be violated. [Vitarelli v. Seaton](#) (1959) 359 U.S. 535. As such, Plaintiff has sufficiently established a property interest.

**B. Plaintiff Has Sufficiently Plead Facts in Support of a Violation of Government Code Section 3060**

Government Code Section 3060 offers yet an additional layer of due process for the removal of an elected or appointed public officer. Cal. Govt. Code § 3060. Despite this, Plaintiff alleges that defendants opted to bypass these well-established statutory procedures, again, denying Plaintiff of the opportunity to be heard while he was still in office. As such, Plaintiff has made a sufficient showing of a Section 3060 violation at this pleading stage.

**C. Plaintiff Has Established Article III Standing**

For purposes of standing under Article III of the Constitution, “[t]o establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” [Spokeo, Inc. v. Robins](#) (2016) 578 U.S. 330, 339, 136, as revised (May 24, 2016). The second element requires the plaintiff to “demonstrat[e] that her injury-in-fact is . . . fairly traceable to the challenged action.” [Daniel v. Nat’l Park Serv.](#) (9th Cir. 2018) 891 F.3d 762, 767 (quoting [Davidson v. Kimberly-Clark Corp.](#) (9th Cir. 2018) 889 F.3d 956, 967). Whether a plaintiff’s injury is “fairly traceable” to the defendant’s conduct requires less than a showing of proximate cause. See [Bennett v. Spear](#) (1997) 520 U.S. 154, 168, (noting that proximate cause is not equivalent to whether an injury is “fairly traceable” to the defendant); [Maya v. Centex Corp.](#) (9th Cir. 2011) 658 F.3d 1060, 1070 (noting that to establish causation for Article III standing, the plaintiff is not required to bear the “heavy . . . burden” of demonstrating proximate cause); [Canyon Cnty. v. Syngenta Seeds, Inc.](#) (9th Cir. 2008) 519 F.3d 969, 975 n.7 (noting that, while the plaintiff could not show proximate cause, the plaintiff adequately alleged causation for Article III standing).



Here, as discussed above, Plaintiff has been harmed by the stigma he carries, which has burdened him to the point of being unable to take advantage of other employment opportunities in his chosen career. The stigma he carries is heavy and has significantly limited his professional prospects making it difficult for him to compete on equal footing with others in the field. This is the type of reputational harm sufficient to establish standing. TransUnion LLC v. Ramirez (2021) 141 S. Ct. 2190, 210 L. Ed. 2d 568 (the Supreme Court explained that “various intangible harms,” such as reputational harm, can qualify as concrete injuries for standing purposes. see also Meese v. Keene (1987) 481 U.S. 465, 479 n.14, 107 S. Ct. 1862, 95 L. Ed. 2d 415 (“[T]he risk of this reputational harm, as we have held earlier in this opinion, is sufficient to establish appellee’s standing to litigate the claim on the merits.”). Additionally, such intangible harms which can also be “concrete,” may also include harms specified by the Constitution itself. See, e.g. Spokeo, 578 U. S. at 340, (citing Pleasant Grove City v. Summum (2009) 555 U. S. 460 (abridgment of free speech), and Church of Lukumi Babalu Aye, Inc. v. Hialeah (1993) 508 U. S. 520 (infringement of free exercise). Here, it is also arguable that because Plaintiff’s disciplinary action stems from his exercise of his First Amendment right to free speech, thus resulting in an abridgment of his rights, such is sufficient to demonstrate actual injury. Benjamin v. Fraser, 264 F.3d 175, 184 (2d Cir. 2001) (holding that where the right at issue is provided directly by the Constitution or federal law, a prisoner has standing to assert that right even if the denial of that right has not produced an “actual injury.”).

**D. Plaintiff has Sufficiently Plead Facts for *Monell* Liability Purposes at this Pleading Stage**

The Ninth Circuit set out three ways for a plaintiff to establish municipal liability: (1) “the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a ‘longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity.’” Gillette v. Delmore 979 F.2d 1342, 1346-47 (9th Cir. 1992). (2) “[T]he plaintiff may

1 establish that the individual who committed the constitutional tort was an official with  
2 ‘final policy-making authority’ and that the challenged action itself thus constituted an act  
3 of official governmental policy.” (Id.) When there is such “final policy-making” authority,  
4 a “single decision” by a municipal policymaker may be enough for Monell liability, “even  
5 though the decision is not intended to govern future situations.” Pembaur v. City of  
6 Cincinnati (1986) 475 U.S. 469, 480-81. (3) “[T]he plaintiff may prove that an official  
7 with final policy-making authority ratified a subordinate's unconstitutional decision or  
8 action and the basis for it.” Gillette 949 F.2d at 1347. “The word ‘policy’ generally implies  
9 a course of action consciously chosen from among various alternatives.” Id. (citing City  
10 of Oklahoma City v. Tuttle, 471 U.S. 808, 823.)

11 A governmental policy may be inferred from "widespread practices or evidence of  
12 repeated constitutional violations for which the errant municipal officers were not  
13 discharged or reprimanded." Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir.  
14 2005) (quoting Nadell v. Las Vegas Metro. Police Dep't, 268 F.3d 924, 929 (9th Cir.  
15 2001).) Furthermore, discovery may uncover evidence of ratification by an official with  
16 policy-making authority. Goodell v. Columbia Cnty. Pub. Transp., 2021 U.S. Dist. LEXIS  
17 263887 (Holding plaintiff's theory of Monell liability survives motion to dismiss  
18 concluding the “Plaintiff, through discovery, could uncover evidence showing this  
19 authority.”) Similarly, here, through discovery, it is more than plausible that Plaintiff will  
20 be able to show that an official with final policy-making authority was involved either by  
21 ratifying or as a final decision maker when Defendants made the decision to circumvent  
22 well-established procedures and deprived plaintiff of his right to due process. Significant  
23 employment actions such as a “no rehire” status are known to be subject to multiple levels  
24 of review within the Department, including by Defendants’ Board of Supervisors who  
25 have policy-making authority. Furthermore, Plaintiff names additional entities and  
26 individuals with policy making authority, including Sheriff Robert G. Luna, Acting  
27 Commander of the Professional Standards Division Sergio V. Escobedo, the EIU and  
28 CEOP, as being involved in the decision or ratification at issue. (Complaint at ¶ 18, 34; *St.*

1 Louis v. Praprotnik (1988) 485 U.S. 112, 114 (the determination of where policymaking  
2 authority actually resides is ultimately a question for the factfinder.) Therefore, the motion  
3 to dismiss should be denied, and Plaintiff's claims implicating *Monell* liability should not  
4 be dismissed at this pleading stage.

5 **E. Plaintiff Sufficiently Pleads Facts to Support his First Amendment**  
6 **Claim at this Pleading Stage.**

7 "A First Amendment retaliation claim against a government employer involves a  
8 sequential five-step series of questions: (1) whether a plaintiff spoke on a matter of public  
9 concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3)  
10 whether the plaintiff's protected speech was a substantial or motivating factor in the  
11 adverse employment action; [and then shifts the burden on the defendant to demonstrate]  
12 (4) whether the state had an adequate justification for treating the employee differently  
13 from other members of the general public; and (5) whether the state would have taken the  
14 adverse employment action even absent the protected speech." Desrochers v. City of San  
15 Bernardino (9<sup>th</sup> Cir. 2009) 572 F.3d 703, 705.

16 The courts have defined the "scope of the public concern element . . . broadly," and  
17 adopted a "liberal construction of what an issue 'of public concern' is under the First  
18 Amendment. Ulrich v. City & County of S.F. (9th Cir. 2002) 308 F.3d 968, 978; Clairmont  
19 v. Sound Mental Health, 632 F.3d 1091, 1103 (9th Cir. 2011); Roe v. City & County of  
20 S.F. (9th Cir. 1997) 109 F.3d 578, 586. Here, Plaintiff was retaliated against when the  
21 decision was made to end his career entirely within the department without due process  
22 for engaging in protected speech. Specifically, Plaintiff openly criticized a Board of  
23 Supervisors' motion on social media that was written by Justice Deputy, Esther Lim, and  
24 he further engaged in protected activity by raising concerns of potential ethical violations  
25 involving Lim. (Complaint ¶ 19c-d, Exhibit 1 and 4.) From the preliminary evidence  
26 obtained, Lim appears to have taken issue with some of the comments made by Villanueva  
27 related to a motion entitled "Taking Action For The Protection For Surviving Families  
28 From Law Enforcement Harassment and Retaliation". (Id.) Considering Plaintiff's role as

Sheriff at the time, as well as Lim’s position, along with the subject matter of the motion, there is no doubt that Villanueva was speaking on matters of public concern. Desrochers v. City of San Bernardino (9th Cir. 2009) 572 F.3d 703 (“The plaintiffs ‘bear[] the burden or snowing [sic] that the[ir] speech addressed an issue of public concern,” Eng, 552 F.3d at 1070, based on “the content, form, and context of a given statement, as revealed by the whole record [citation].”; Simpson v. City of Upland, 2019 U.S. Dist. LEXIS 228279, \*17-18 (“Speech involves a matter of public concern when it can fairly be considered to relate to ‘any matter of political, social, or other concern to the community.’”)

Furthermore, “whether an adverse employment action is intended to be retaliatory is a question of fact that must be decided in the light of the timing and the surrounding circumstances.” Ellins v. City of Sierra Madre (9th Cir. 2013) 710 F.3d 1049, 1053. Plaintiff has thus satisfied the requirements to show a claim under the First Amendment at this pleading stage.<sup>1</sup>

#### **F. Plaintiff has Rightfully Named the Defendants in This Action**

Where the plaintiff is seeking damages against a state official, a strong presumption is created in favor of a personal-capacity suit because an official-capacity suit for damages would be barred. See Mitchell v. Washington (9th Cir. 2016) 818 F.3d 436, 442; Romano v. Bible (9th Cir. 1999) 169 F.3d 1182, 1186; Shoshone-Bannock Tribes v. Fish & Game Comm’n, Idaho (9th Cir. 1994) 42 F.3d 1278, 1284; Cerrato v. S.F. Cmty. Coll. Dist. (9th Cir. 1994) 26 F.3d 968, 973 n.16; Price, 928 F.2d at 828. “Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law.” Kentucky v. Graham (1985) 473 U.S. 159, 165. Liability in a personal-capacity suit can be demonstrated by showing that the official caused the alleged constitutional injury. Id. at 166. While the official in a personal-capacity suit may, depending upon the facts, be able to establish immunity from claims for damages, the

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<sup>1</sup> Plaintiff seeks leave to amend the complaint as to his First Amendment Claim to allege this claim under 42 U.S.C. § 1983.

individual defendants should not be dismissed at this pleading stage. Murchinson v. City of Sierra Madre, 2023 U.S. Dist. LEXIS 173922 (While qualified immunity may ultimately be available to individual defendants Shaw and Cadzow based on the evidence uncovered in discovery, it is not appropriate to dismiss on that basis at this stage.) See Morley v. Walker (9th Cir. 1999) 175 F.3d 756, 761 (“Our determination that qualified immunity may be available *does not assist [Defendant] at this stage. [Defendant] filed a motion to dismiss, not a summary judgment motion.* We must regard all of the allegations in [Plaintiff’s] complaint as true. Through that lens, the complaint withstands a motion to dismiss.”). Accordingly, the individual defendants name in this action should not be dismissed.

### **G. Plaintiff Sufficiently Pleads an IIED Claim.**

The law provides that, for a plaintiff to allege a claim for intentional infliction of emotional distress:

Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff’s interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress.

Kiseskey v. Carpenters’ Trust for So. California, 114 Cal.App.3d 222, 228 (1983).

“Illegal conduct [is] *per se* outrageous,” satisfying the standard for an IIED claim. Chin, *et al.*, *Employment Litigation*, § 5:280 (The Rutter Group, 2005), citing Cramer v. Consolidated Freightways, Inc., 255 F.3d 683, 697 (9th Cir. 2001) (*en banc*). Defendants’ alleged constitutional violations are all individually illegal, giving rise to the IIED claim. California case law is in accord.

Furthermore, under California law, humiliation and anguish, according to proof, may satisfy the “severe” emotional distress element of IIED. Alcorn v. Anbro Engineering, Inc., 2 Cal.3d 493, 498 (1970). Where reasonable minds differ, the trier of fact should determine whether the emotional distress rises to the level of “severe.” *Id.*

Therefore, defendants’ contention that Plaintiff’s IIED allegations are entirely

1 conclusory is patently false. Indeed, through his Complaint, Plaintiff made numerous  
2 detailed remarks as to how defendants' conduct constituted intentional infliction of  
3 emotional distress. For example, Plaintiff alleged that defendants' defamatory statements  
4 were not "merely negligent or careless, but were made with the intent to harm plaintiff's  
5 reputation, profession, and emotional well-being." (Complaint, ¶ 55.) To further support  
6 his assertion, Plaintiff re-alleged and incorporated by reference any and all prior instances  
7 of IIED identified in the Complaint. (*Id.*, ¶ 53.) Additionally, any dispute as to whether  
8 defendants' conduct is outrageous is a question for the jury, not for the court at the pleading  
9 stage. *Murphy v. Allstate Ins. Co.*, 83 Cal.App.3d 38, 51 (1978); *Billmeyer v. Plaza Bank*  
10 *of Commerce*, 42 Cal.App.4th 1086, 1097 (1996).

11 Furthermore, Plaintiff's intentional infliction of emotional distress claim alleges that  
12 defendants acted "intentionally" and/or with "reckless disregard" in taking the above  
13 actions. The Complaint alleges that defendants' conduct caused plaintiff to suffer severe  
14 emotional distress, including mental anguish, as a result of the conduct. (Complaint, ¶ 57.)

15 **H. Plaintiff Sufficiently States Claims for Defamation and Compelled**  
16 **Self-Defamation.**

17 **(1) Plaintiff Sufficiently Pleads a Defamation Claim.**

18 In order to plead a defamation claim sufficiently, plaintiff must show that defendants  
19 published to an individual other than plaintiff a false and defamatory statement. *Taus v.*  
20 *Loftus*, 40 Cal.4th 683, 720 (2007). Civil Code section 46(3) broadly defines slander to  
21 include any language with a tendency to injure a person's reputation. This includes "what  
22 is insinuated as well as what is stated explicitly." (*MacLeod v. Tribune Publishing Co.*  
23 *(1959) 52 Cal.2d 536, 547*; *Cameron v. Wernick* (1967) 251 Cal.App.2d 890, 893.) Under  
24 this paradigm, charges of dishonesty or ethical/legal violations are defamatory per se.  
25 *Cameron*, 251 Cal.App.2d at 893. The plaintiff need not even show that anyone believed  
26 the statements. (*Arno v. Stewart* (1966) 245 Cal.App.2d 955, 963.) To be defamation,  
27 publication need only be to a single person other than the plaintiff. (*Lundquist v. Reusser*  
28 *(1994) 7 Cal.4th 1193, 1203*.) Even publications that were completely internal, such as



1 those made by and received by employees may constitute actionable defamation against  
2 an entity employer. (Kelly v. Gen. Tel. (1982) 136 Cal.App.3d 278, 284.) Plaintiff pleads  
3 more than enough specific facts to make a clear and concise defamation claim.

4 Plaintiff alleges that defendants made false defamatory statements regarding his  
5 professional reputation. The Complaint alleges that defendant Huntsman and his Los  
6 Angeles County Office of Inspector General have been permitted to defame Villanueva  
7 continuously by falsely suggesting that Plaintiff engaged in unlawful and potentially  
8 unlawful acts during his time as Sheriff. (Complaint, ¶ 19 (f)). Moreover, the Complaint  
9 alleges that Defendant Huntsman—though unknown to Plaintiff until after October  
10 2023—made false statements regarding Villanueva that were *per se* defamatory.  
11 (Complaint ¶ 19.) Such false statements by Huntsman include allegations that  
12 Villanueva’s staff is “very anti-Chinese,” that Villanueva targeted Esther Lim “because  
13 she’s Chinese” (even though she identifies as Korean American), and that Villanueva was  
14 allegedly harassing Huntsman by calling Huntsman by a name he did “not use”—despite  
15 numerous public uses of this name (Max-Gustaf Hunstman) by Defendant Huntsman,  
16 including Huntsman’s own desk plaque. (Complaint, ¶ 19 (a-d)). Further, the Complaint  
17 alleges that Defendant’s branded him as unqualified to work within the County,  
18 disseminating this information to the public shortly after Plaintiff announced his  
19 candidacy. (Complaint, page 7.) These statements were published to, amongst others,  
20 The Los Angeles Times, which later published a hit-piece article titled “Do Not Rehire”  
21 thereby further disseminating defendants defamatory remarks to the general public. (*Id.*,  
22 ¶16.) The information was disseminated after Plaintiff announced his candidacy for the  
23 Los Angeles County Board of Supervisors, before ballots for the 2024 primary were  
24 released. (*Id.*) Plaintiff further alleges that these statements were made with actual  
25 malice—that is, that Defendants knew or should have known that the statements were false  
26 or acted with reckless disregard as to their truth. (*Id.*, ¶ 44.)

## 27 **(2) The Late Discovery Rule Applies to Defamation.**

28 The “rule of discovery” applies to defamation, therefore, the one-year statute of



1 limitations for defamation does not begin to run until the defamation is discovered. (See  
2 Manguso v. Oceanside Unified School District (1979) 88 Cal.App.3d 725, 728-731  
3 (Plaintiff's action, filed within one year of discovery of defamation placed in her  
4 confidential personnel file 16 years before she discovered the defamation, survived a  
5 statute of limitations attack.); see also Schneider v. United Airlines, Inc. (1989) 208  
6 Cal.App.3d 71, 77.) Furthermore, in Bernson v. Browning-Ferris Industries (1994) 7 Cal.  
7 4th 926, the plaintiff knew of the publication of defamation but was unable to discover  
8 who published it until four years after publication. The trial court granted summary  
9 judgment holding plaintiff's claim was barred under the one-year statute of limitations.  
10 (*Id.*) The Supreme Court said reversed and explained:

11 The statute of limitations usually commences when a cause of action "accrues," and it is  
12 generally said that "an action accrues on the date of injury." (Cite omitted.) Alternatively, it  
13 is often stated that the statute commences "upon the occurrence of the last element essential  
14 to the cause of action." (Cite omitted.) These general principles have been significantly  
15 modified by the common law "discovery rule," which provides that the accrual date may be  
16 "delayed until the plaintiff is aware of her injury and its negligent cause. (Cite omitted.)

17 A close cousin of the discovery rule is the "well accepted principle . . . of fraudulent  
18 concealment. (Cite omitted.)" It has long been established that the defendant's fraud in  
19 concealing a cause of action against him tolls the applicable statute of limitations, but only  
20 for that period during which the claim is undiscovered by plaintiff or until such time as  
21 plaintiff, by the exercise of reasonable diligence, should have discovered it." (*Ibid.*) Like the  
22 discovery rule, the rule of fraudulent concealment is an equitable principle designed to effect  
23 substantial justice between the parties; its rationale "is that the culpable defendant should be  
24 estopped from profiting by his own wrong to the extent that it hindered an 'otherwise diligent'  
25 plaintiff in discovering his cause of action." (*Bernson*, supra, 7 Cal. 4th at 931.)

26 In this case, the late discovery rule applies. Indeed, the Complaint alleges that  
27 Plaintiff was unaware until after he announced his candidacy for Los Angeles County  
28 Board of Supervisors in September 2023 that he was purportedly ineligible for re-hire.  
(Complaint ¶¶ 15-16.) It was not until January 2024 that Plaintiff discovered false and  
malicious statements by Huntsman made in or around June 2022. (Complaint ¶¶ 16-18.)  
Therefore, plaintiff sufficiently pleads more than enough specific facts to show each of  
the elements of defamation.

### **(3) The Defamatory Statements at Issue Were Made with Actual**

**Malice and Are Not Privileged.**

Defendants’ attempts to characterize the above-described statements as absolutely privileged is unavailing. As discussed above, the statements at issue are not protected by a litigation privilege or mandated official acts. Indeed, the protections of Civ. Code § 47 (b) do not apply to “any communication between a person and a law enforcement agency in which the person makes a false report that another person has committed, or is in the act of committing, a criminal act or is engaged in an activity requiring law enforcement intervention, knowing that the report is false, or with reckless disregard for the truth or falsity of the report.” (Civ. Code § 47 (b) (5)).

Here, the defamatory statements as alleged in the Complaint incontrovertibly are not privileged as they plainly include false reports that [Plaintiff] has committed or is in the act of committing a criminal act. For example, Huntsman’s campaign of reporting *falsely* that Plaintiff targeted Lim “because she is Chinese” and continuously suggesting that Plaintiff engaged in unlawful acts fall far beyond the protections afforded by Civ. Code § 47 it argued in its motion.

At best, Defendants assert a privilege per Civ. Code § 47 (c). However, the privilege afforded by Civil Code section 47(c) is a *conditional* privilege which is lost if the privilege is abused, or if the publication was motivated by malice. ([\*Deaile v. General Tel. Co. of Calif.\* \(1974\) 40 Cal.App.3d 841, 847](#); [\*McMann v. Wadler\* \(1961\) 189 Cal.App.2d 124, 129.](#)) Thus, in order to overcome or eliminate any conditional privilege, a plaintiff need only show some evidence of either malice or abuse of privilege. The existence or nonexistence of malice is a question of fact for the jury. ([\*Agarwal v. Johnson, supra\*, 25 Cal.3d at 944-945](#) (factual issue whether publication was motivated by hatred or ill will towards the plaintiff); [\*Larrick v. Gilloon\* \(1959\) 176 Cal.App.2d 408, 416](#), disapproved on other grounds by [\*Field Research Corp. v. Superior Court\* \(1969\) 71 Cal.2d 110, 114](#) [“the question of whether a publication was inspired by actual malice is essentially and peculiarly a question of fact.”])

**(4) Plaintiff Sufficiently Pleads a Compelled Self-Defamation Claim.**

1 In order to plead a claim for compelled self-defamation, a plaintiff must show that:

2 [T]he person defamed republishes the statement, provided that the  
3 originator “has reason to believe that the person defamed will be under  
4 a strong compulsion to disclose the contents of the defamatory  
statement to a third person after he has read it or been informed of its  
contents.”

5 McKinney v. County of Santa Clara, 110 Cal.App.3d 787, 796 (1980). However, this rule  
6 “has been limited to a narrow class of cases, usually where a plaintiff is compelled to  
7 republish the statements in aid of disproving them.” Live Oak Publishing Co. v. Cohagan,  
8 234 Cal.App.3d 1277, 1285 (1991).

9 Plaintiff has alleged more than enough facts to support a claim for compelled self-  
10 defamation. Plaintiff specifically alleges the exact defamatory statements that were made,  
11 that defendants unjustifiably and recklessly labeled Plaintiff with a “Do Not Rehire”  
12 designation and that the County continuously and publicly suggests that he engaged in  
13 unlawful acts as Sheriff. (Complaint, ¶¶ 16, 19(f).) Defendants’ basis for labeling Plaintiff  
14 with such a designation was based on false testimony and improper internal procedure.  
15 (Id., ¶¶ 16, 19, 20.) Defendants knew when they labeled Plaintiff with a “Do Not Rehire”  
16 designation that he would be forced to repeat the designation and discuss the false and  
17 injurious allegations in order to adequately defend himself in the court of public opinion.  
18 Therefore, Plaintiff has alleged more than enough facts to show what the exact defamatory  
19 statements were and why he would be forced to repeat those comments to other  
20 prospective employers. Therefore, this claim should be upheld.

21 **I. Plaintiff Sufficiently Pleads a Claim for Negligent Hiring, Supervision**  
22 **and Retention.**

23 Negligence liability will be imposed on an employer if it knew or should have known  
24 that ***hiring or retaining*** the employee created a particular risk or hazard and that particular  
25 harm materializes. Phillips v. TLC Plumbing, Inc. (2009) 172 Cal.App.4th 1133, 1139.  
26 Liability for negligent hiring and supervision is based upon the reasoning that if an  
27 enterprise hires, supervises, or retains individuals with characteristics which might pose a  
28 danger to customed or other employees, the enterprise should bear the loss cause by the

1 wrongdoing of its incompetent or unfit employees. *Id.* The tort has developed in California  
2 in factual settings where the plaintiff's injury occurred in the workplace, or  
3 the contract between the plaintiff and the employee was generated by the employment  
4 relationship.” *Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1339-1340.

5 Here, contrary to Defendants' contentions, Plaintiff has pled sufficient facts to  
6 support this claim. Specifically, Plaintiff alleges that Defendants owed a duty of care to  
7 plaintiff to supervise their managers, officials, and other employees to ensure they  
8 complied with due process requirements. (Complaint ¶ 59.) The Complaint further alleges  
9 that Defendants' breached said duty resulting in harm to Plaintiff. (*Id.*) As discussed  
10 extensively above, Plaintiff's due process rights were violated notwithstanding said duty.

11 **J. In the Alternative, Plaintiff Requests Leave to Amend.**

12 Should this Court be inclined to grant defendants' Motion to Dismiss, Plaintiff should  
13 be granted leave to amend. Leave to amend should be freely granted in the interests of  
14 justice. F.R.C.P. 15(a). In the present case, defendants have not even argued, let alone  
15 established, that plaintiff could not allege more facts in support of his causes of action.

16 In the event Defendants argue that the filing of their California anti-SLAPP motion  
17 prevents Plaintiff from amending his complaint, that argument should swiftly be  
18 disregarded. In *Verizon Del., Inc v. Covad Communications, Co.* (2004), the Ninth Circuit  
19 Court of Appeals held, “[a]s Vess implicitly suggests, granting a defendant's anti-SLAPP  
20 motion to strike a plaintiff's initial complaint without granting plaintiff leave to amend  
21 would collide with Fed. R. Civ. P. 15(a).” 377 F.3d 1081, 1091. The Court further stated,  
22 “Moreover, the purpose of the anti-SLAPP statute, the early dismissal of meritless claims,  
23 would still be served if plaintiffs eliminated the offending claims from their original  
24 complaint. If the offending claims remain in the first amended complaint, the anti-SLAPP  
25 remedies remain available to defendants.” *Id.* As such, because an amendment to the  
26 complaint would serve defendants' interests by eliminating offending claims and because  
27 F.R.C.P. 15(a) requires leave to amend to be freely granted, in the event this Court should  
28 grant defendants' motion to strike, Plaintiff requests this court grant Plaintiff leave to

1 amend its complaint, despite the existence of defendants' anti-SLAPP motion.

2 **V. CONCLUSION**

3 Plaintiff, Villanueva, requests that defendants' Motion to Dismiss be denied or, in  
4 the alternative, that plaintiff be given leave to amend.

5  
6 Dated: August 19, 2024

SHEGERIAN & ASSOCIATES, INC.

7  
8 By: /s/ Carney Shegerian

9 Carney Shegerian, Esq.

10 John David, Esq.

11 Yesenia Cardoza, Esq.

12 Attorneys for Plaintiff,  
13 ALEX VILLANUEVA  
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**VILLANUEVA v. COUNTY OF LOS ANGELES, et al. USDC Case No. 2:24-cv-04979 SVW (JC)**

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

I am an employee in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 3764 Elizabeth Street, Riverside, California 92506.

On August 19, 2024, I served the foregoing document, described as **“PLAINTIFF ALEX VILLANUEVA’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES,”** on all interested parties in this action as follows:

**LOUIS R. MILLER (State Bar No. 54141)**  
**smiller@millerbarondess.com**  
**JASON H. TOKORO (State Bar No. 252345)**  
**jtokoro@millerbarondess.com**  
**STEVEN G. WILLIAMSON (State Bar No. 343842)**  
**swilliamson@millerbarondess.com**  
**MILLER BARONDESS, LLP**  
**2121 Avenue of the Stars, Suite 2600**  
**Los Angeles, California 90067**

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 19, 2024, at Riverside, California.

  
\_\_\_\_\_  
Delmy Garcia